

## **APPENDIX I.**

### **Analysis of Complaints from DBEs and Other Firms**

GDOT has a process for receiving and investigating complaints from DBEs and other firms concerning implementation of the Federal DBE Program. GDOT can issue sanctions based upon these investigations. The BBC study team reviewed written complaints GDOT received between January 2009 and June 2011 related to operation of the DBE Program. The study team examined documentation in GDOT files and interviewed GDOT staff about the 19 written complaints identified for this time period.

#### **Types of Complaints**

Complaints made by DBEs and other firms related to:

- Improper delay or withholding of payment by the prime contractor;
- Non-use of a listed DBE subcontractor and fraudulent reporting of DBE use; and
- Other fraudulent actions.

Each is discussed in turn.

#### **Allegations of improper delay or withholding of payment by the prime contractor.**

Two-thirds of the written complaints GDOT received within the study period included assertions by the DBE subcontractor that the prime contractor had improperly delayed or withheld payment to the subcontract.

- After researching these complaints, GDOT found in four of the complaints that the prime contractor's withholding of payments was permissible. In some of these instances, GDOT agreed with the prime contractor that the subcontract's work was unsatisfactory and that withholding payment was justified.
- In most of the complaints concerning withholding or delay of payment to DBE subcontractors, GDOT determined that the prime contractor was in violation of the GDOT prompt payment provision (and sometimes other aspects of the DBE Program or other GDOT policies). When investigating complaints made by a DBE subcontractor, there are instances where GDOT found evidence that the prime contractor had taken improper actions concerning other DBE subcontractors as well.

GDOT pursued suspension of the prime contractor from bidding on future federally-funded contracts for a specific length of time (six months up to three years).

**Allegations of non-use of DBE subcontractor and/or fraudulent reporting of DBE use.**

Eight of the 19 written complaints included allegations by a DBE that it had been listed by the prime contractor as a DBE subcontractor to meet DBE goals on a contract, but that the prime contractor had not used the DBE. Some of these complaints alleged false reporting of DBE use to GDOT.

- In one of the cases, GDOT determined that the prime contractor had improperly substituted another DBE in violation of the Federal DBE Program. The prime contractor had listed one DBE but substituted another DBE after award of the contract allegedly because it was able to obtain a lower price from the second DBE. GDOT pursued sanctions against the prime contractor that included a six-month suspension from receiving or working on federally-funded contracts.
- In another case, GDOT determined that the prime contractor had submitted falsified records concerning the subcontractor's work and found evidence of possible retaliation by the prime contractor against the subcontractor for making the complaint. GDOT pursued sanctions against the prime contractor that included a three-year suspension from federally-funded contracts.

Allegations included instances where the prime contractor had listed the DBE without the DBE's prior knowledge or approval. One example involved a prime contractor and a city government that used the DBE status of a certified company on a contract without the DBE's knowledge. GDOT pursued sanctions against both the city government and the prime contractor.

**Other allegations of fraudulent actions.** One DBE alleged that a prime contractor sent a letter to the DBE offering a \$500 fee for the firm to be listed as a DBE subcontractor for a contract but receive no work. GDOT's investigation found that the prime contractor attempted to circumvent the DBE Program in a fraudulent manner and that it had appeared to violate federal regulations. GDOT placed a stop work order on the project and withheld all of the project's federal funds. The DBE subcontractor received payment from the prime contractor's bonding company.

**Summary**

The types of complaints DBEs made to GDOT pertaining to payment issues and non-use of listed DBEs are consistent with qualitative information compiled in local government disparity studies discussed in Chapter 4. The complaints made to GDOT indicate a reluctance of some prime contractors on GDOT projects to comply with the Federal DBE Program. The complaints suggest that DBE subcontractors are unfairly treated by some prime contractors on GDOT contracts.

GDOT recently revised its process to act on complaints, including a stronger system for implementing sanctions when firms have violated provisions of the Federal DBE Program.